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SUPPLEMENT.

THE ABOLITION OF PRIVY COUNCIL JURISDICTION ACT, 1949.

CONSTITUENT ASSEMBLY ACT No. V OF 1949.

[*Received the assent of the President of the Constituent Assembly on the 24th September,* 1949.]
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An Act to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

WHEREAS it is expedient to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, and to confer a corresponding jurisdiction on the Federal Court of India ,

It is hereby enacted as follows —

Short title and commencement.

1. (1) This Act may be called THE ABOLITION OF PRIVY COUNCIL JURISDICTION ACT, 1949.

(2) It shall come into force on the tenth day of October, 1949, which day is hereinafter referred to as " the appointed day ".

Abolition of Privy Council Jurisdiction

2. (1) As from the appointed day, the jurisdiction of His Majesty in Council to entertain, and save as hereinafter provided to dispose of, appeals and petitions from, or in respect of, any judgment, decree or order of any Court or tribunal (other than the Federal Court) within the territory of India, including appeals and petitions in respect of Criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty's prerogative or otherwise, shall cease.

(2) The appeals and petitions aforesaid are hereinafter referred to as " Indian appeals " and " Indian petitions ", respectively.

Repeal.

3 (1) Sections 208 and 218 of the Government of India Act, 1935, are hereby repealed.

(2) Any legal proceedings pending by virtue of the said section 208 immediately before the appointed day, whether before His Majesty in Council or the Federal Court, shall by virtue of this Act abate on the appointed day.

Continuance of Privy Council jurisdiction in certain pending cases

4. Nothing contained in section 2 shall affect the jurisdiction of His Majesty in Council to dispose of—

(a) any Indian appeal or petition on which the Judicial Committee of the Privy Council has before the appointed day delivered judgment or, as the case may be, reported to His Majesty, but which has not been determined by an Order in Council of His Majesty; or

(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949, and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or

(d) any Indian petition which has been lodged before the appointed day in the Registry of the Privy Council.

Conferment of corresponding jurisdiction on Federal Court.

5. (1) As from the appointed day, the Federal Court shall, in addition to the jurisdiction conferred on it by the Government of India Act, 1935, and the Federal Court (Enlargement of Jurisdiction) Act, 1947, but subject to the provisions of this section, have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has, whether by virtue of His Majesty's prerogative or otherwise, immediately before the appointed day.

(2) Notwithstanding anything contained in sub-section (1) of this section, the Federal Court shall have no jurisdiction in respect of any such appeal or petition as is referred to in section 4:

Provided that where, upon any such petition as aforesaid, special leave to appeal to His Majesty in Council is granted after the appointed day, all further steps to be taken in the appeal shall be taken in, and the appeal shall be disposed of by, the Federal Court as if the special leave to appeal had been granted on a petition made to that Court.

(3) If any question arises whether an appeal or petition is an appeal or petition of the nature referred to in clause (a), (b), (c) or (d) of section 4, a certificate of the Registrar of the Privy Council shall be conclusive evidence on the question.

Transfer of pending appeals to the Federal Court

6. All proceedings in respect of any Indian appeals pending before His Majesty in Council immediately before the appointed day, except those referred to in section 4, shall by virtue of this Act stand transferred to the Federal Court, and shall be disposed of by it in the exercise of the jurisdiction conferred on it by this Act.

Continuance of certain proceeding in High Courts

7. All proceedings and steps taken in, and orders made and certificates granted by, a High Court in connection with an Indian appeal or petition shall, except in the case of any such appeal or petition as is referred to in section 4, be deemed to be in connection with an appeal or petition to the Federal Court from, or in respect of, the same judgment, decree or order under the provisions of this Act, and shall be concluded, or as the case may be, have effect accordingly.

Effect of orders of His Majesty in Council

8. Any order of His Majesty in Council made on an Indian appeal or petition, whether before, on or after the appointed day, shall for all purposes have effect, not only as an order of His Majesty in Council, but also as if it were an order or decree made by the Federal Court in the exercise of the jurisdiction conferred by this Act

Amendments of the Government of India Act, 1935.

9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely :—

" (2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has been wrongly decided and, with the leave of the Federal Court, on any other ground "

(2) In section 209 of the said Act, for sub-sections (1) and (2) the following sub-section shall be substituted, namely :—

"(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India in the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court "

(3) In clause (*a*) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure " sub-section (2) ", the word, brackets and figure "sub-section (1) " shall be substituted

(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted namely —

" (1-A) Subject to the provisions of the Code of Civil Procedure, 1908 or any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of Court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced "

Modification of existing laws

10 The provisions of the Code of Civil Procedure, 1908, and of any other law in force on the appointed day relating to Indian appeals and petitions shall as from that day have effect, except in relation to the appeals and petitions referred to in section 4, as if in the said provisions, for all references to His Majesty in Council, there had been substituted references to the Federal Court.

STATEMENT OF OBJECTS AND REASONS.

There are at present pending before the Judicial Committee of the Privy Council about 70 Civil appeals and 10 Criminal appeals from the judgments, decrees and final orders of the various High Courts in India. Between now and the date on which the new Constitution of India will come into force early next year, the Privy Council is not likely to dispose of more than 20 appeals. While

the flow of civil appeals from all the Indian High Courts, except the High Court of the Judicial Commissioner of Ajmer-Merwara, was stopped on the 1st February, 1948, by the provisions of the Federal Court (Enlargement of Jurisdiction) Act, 1947 (I of 1948), a small number of criminal appeals are admitted from time to time by special leave of His Majesty in Council.

2. In Article 308 (3) of the Draft Constitution it is proposed that "on and from the date of commencement of the Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any Court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of by, the Supreme Court" If the position is left to the operation of this Article, as many as 60 appeals will be kept pending before the Privy Council for 5 or 6 months, only to be transferred to the Supreme Court on the date of commencement of the new Constitution, and a small number of appeals, mainly criminal, will be instituted before the Privy Council during the same period with little chance of being finally disposed of by that date.

3. This Bill accordingly proposes that with effect from the 10th October, 1949, the Federal Court should, as an interim measure, be invested with the same jurisdiction to entertain and dispose of appeals and petitions from the judgments, decrees and orders of all High Courts in India as His Majesty in Council has at present, and that the jurisdiction of His Majesty in Council to entertain any new appeals and petitions and to dispose of any pending appeals except those set down for hearing during the next sittings of the Judicial Committee (due to commence on the 12th October, 1949) should cease. All other pending appeals are proposed to be transferred to the Federal Court on the 10th October next.